

ORIGINAL

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARLES ZUBARIK,

Plaintiff,

v.

RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN,

Defendants.

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CIVIL ACTION NO. \_\_\_\_\_

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED  JUL 27 2005  CLERK U.S. DISTRICT COURT By <u>AB</u> Deputy
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**DEFENDANTS' NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Rubloff Development Group, Inc. ("Rubloff"), Sundowner Mesa, L.L.C. ("Sundowner") and James P. Flynn ("Flynn")(collectively "Defendants") and, pursuant to 28 U.S.C. §1441(a), gives notice of the removal of Cause No. 05-05988-I in the 162nd Judicial District Court, Dallas County, Texas, ("State Court Action"). In support thereof, Defendants respectfully show the following:

1. On June 21, 2005, Plaintiff Charles Zubarik ("Plaintiff") filed Plaintiff's Original Petition in the State Court Action and thereafter served Defendants on June 27, 2005 by service upon the Texas Secretary of State. As evidenced by Plaintiff's Original Petition, Plaintiff is a resident of the State of Texas, Rubloff is a resident of the State of Illinois, Sundowner is a resident of the State of Georgia and Flynn is a resident of the State of Virginia. Plaintiff seeks damages from Defendants "in excess of \$2,000,000.00 and could be as high as \$2,500,00.00."

2. This court has original jurisdiction over Plaintiff's claims, pursuant to 28 U.S.C. §1332(a)(1), because: i) the matter in controversy exceeds the sum of \$75,000.00; and ii) is between citizens of different states.

3. Defendants have filed herewith copies of all pleadings filed in the State Court Action, as well as a certified copy of the trial court's docket sheet. A copy of a notice of removal shall be filed with the clerk of the state court.

Respectfully submitted,



---

Robert F. Maris  
State Bar No. 12986300  
Michael J. McKleroy, Jr.  
State Bar No. 24000095  
MARIS & LANIER, P.C.  
10440 N. Central Expressway  
1450 Meadow Park, LB 702  
Dallas, Texas 75231  
214-706-0920 telephone  
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANTS  
RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN

**CERTIFICATE OF SERVICE**

This is to certify that a true, correct and complete copy of the foregoing document has been served in accordance with the Federal Rules of Civil Procedure on the 27th day of July, 2005, to:

Peter J. Harry  
David A. Buono  
2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
**VIA HAND DELIVERY**

A handwritten signature in black ink, appearing to read 'RFM', is written above a horizontal line.

Robert F. Maris

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RT

- on

Respectfully submitted,



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Robert F. Maris  
State Bar No. 12986300  
Michael J. McKleroy, Jr.  
State Bar No. 24000095  
MARIS & LANIER, P.C.  
10440 N. Central Expressway  
1450 Meadow Park, LB 702  
Dallas, Texas 75231  
214-706-0920 telephone  
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANTS  
RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN

**CERTIFICATE OF SERVICE**

This is to certify that a true, correct and complete copy of the foregoing document has been served in accordance with the Federal Rules of Civil Procedure on the 26th day of July, 2005, to:

Peter J. Harry  
David A. Buono  
2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
**VIA HAND DELIVERY**



---

Robert F. Maris

882.002\removal.idx.wpd

CAUSE NO. 05-05988

CHARLES ZUBARIK, Individually,

Plaintiff,

v.

RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, LLC, and  
JAMES P. FLYNN, Individually,

Defendants.

IN THE DISTRICT COURT

1-162nd JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FILED  
2005 JUN 21 PM 2:21  
JIM HAMLIN  
DISTRICT CLERK  
DALLAS CO., TEXAS  
DEPUTYPLAINTIFF'S ORIGINAL PETITION

Comes now, Plaintiff Charles Zubarik ("Plaintiff" or "Zubarik") and files this his original petition complaining of Rubloff Development Group, Inc. ("Rubloff"), Sundowner Mesa, LLC ("Sundowner") and James P. Flynn, Individually ("Flynn") and for same would show the Court as follows:

I. PARTIES

1. Plaintiff is a resident of Dallas County, Texas.
2. Rubloff is an Illinois corporation. Rubloff conducts business in Texas and/or has committed torts within Texas, but does not currently maintain a Registered Agent in this State. Service can therefore be effectuated pursuant to the Texas Civil Practices & Remedies Code, Sections 17.044 and 17.045, by serving the Secretary of State of Texas, who can in turn provide notice and service to Rubloff through its Registered Agent, Robert S. Brownson, at the address provided by the Illinois Secretary of State, located at 2800 West Higgins Road, Suite 205, Hoffman Estates, Illinois 60195.
3. Sundowner is a Georgia limited liability company. Sundowner conducts business in Texas and/or has committed torts within Texas, but does not currently maintain a Registered

Agent in this State. Service can therefore be effectuated pursuant to the Texas Civil Practices & Remedies Code, Sections 17.044 and 17.045, by serving the Secretary of State of Texas, who can in turn provide notice and service to Sundowner through its Registered Agent, CT Corporation, at the address provided by the Georgia Secretary of State, located at 1201 Peachtree Street, NE, Atlanta, Georgia 30361.

4. Flynn is an individual resident of Virginia. Flynn conducts business in Texas and/or has committed torts within Texas. Service can therefore be effectuated pursuant to the Texas Civil Practices & Remedies Code, Sections 17.044 and 17.045, by serving the Secretary of State of Texas, who can in turn provide notice and service to Flynn at his home address of 5833 Brandon Hill Loop, Haymarket, Virginia 20169.

## **II. JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter as this is an action for damages in excess of the minimum jurisdictional limits of the Court. Venue is proper in Dallas County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002, because a substantial amount of the events giving rise to the claims arose in Dallas County, including without limitation, Dallas County is the place where the agreements referenced herein were made, where Plaintiff did much of the work for which he claims compensation, and is the place where damages were incurred.

## **III. FACTS COMMON TO ALL CAUSES OF ACTION**

6. Plaintiff has long been involved in the transportation industry and is intimately familiar with air freight and air transportation in particular. For some years, he was the head of air freight transportation for Emory Worldwide and became knowledgeable about all aspects of the air freight business.

7. Beginning in the year 2000, he became specifically involved with and specialized in the area of handling programs for the transportation of prisoners under the United States Federal Marshall's Prisoner Transportation Programs. To this end he formed a corporation called Prisoner Transportation Services and actively sought to bid on and obtain contracts for U.S. Marshall prisoner transportation. These Marshall's contracts, generally, involved agreements where companies such as Prisoner Transportation Services would provide aircraft for the interstate and international transportation of prisoners and illegal aliens being handled by the U.S. Marshall services.

8. Beginning approximately three (3) years ago, Mr. Zubarik began the bidding process to obtain U.S. Marshall's contract looking in several places. To this end, and in conjunction with an individual named Owen Schuler, Plaintiff sought and obtained the granting of the contract for the Mesa, Arizona prisoner transportation program. The Corporation which was awarded this contract was wholly owned by Mr. Schuler (Metscan Technologies) but did business for purposes of pursuing the Marshall's contract under the name of Prisoner Transportation Services, at the request and by permission of Plaintiff.

9. Plaintiff would show that it was solely due to his extensive experience in the air freight and air transportation business which allowed Prisoner Transportation Services to obtain the Marshall's contract in June, 2004.

10. As soon as the contract was awarded, Plaintiff, who was the only other employee of Prisoner Transportation Services other than Mr. Schuler, set about to hire mechanics, managers and finalize aircraft leases and aircraft heavy checks / modifications necessary to fulfill the U.S. Marshall's contracts.



11. As an employee of PTS, Plaintiff had an agreement with Mr. Schuler that he would be paid \$10,000 per month plus thirty percent (30%) benefits for his role in being the person responsible for the bidding, winning, set up activities and administration of the contract. He was also contemplated that a small office would be set up in Dallas to act as a central point for the management of the Contract and as a record keeping facility. In addition to the above, there was a specific agreement between Plaintiff and Schuler that as part of his efforts, Plaintiff would be entitled to 20% of the pre-taxed profits flowing from the contract. In the fall of 2004, the parties conservatively estimated that for the first year and for expected two (2) years of renewals of the Arizona contract the total profits would be in excess of \$6,500,000.

12. After the contract had been awarded and Plaintiff was in the process of finalizing aircraft leasing, employee retention and setting up the pre-contract heavy aircraft maintenance, Schuler was secretly negotiating with Rubloff to sell his position in the contract for \$1,000,000. Even though Schuler had no expertise in the business and had put almost none of his own money into the transaction, on information and belief did receive \$1,000,000 from Rubloff for assigning the contract from PTS to Rubloff.

13. When confronted with this transaction, Plaintiff was assured at various times by agents and officer of Rubloff and Flynn that his agreement with Schuler would be honored.

14. During this time what was absolutely vital to Flynn and the officers of Rubloff that Zubarik be kept in the agreement as the operator of PTS because he was the only one who had the expertise, total knowledge and context to develop, set up and run the operation at a profit and it was on the basis of his knowledge and expertise that the contract had been awarded to PTS in the first place.

15. Nonetheless, Rubloff and the entity to which it ultimately assigned the PTS Mesa, Arizona Marshall's contract, Sundowner, could not keep the contract unless the government agreed to a novation of the original award won by Mr. Zubarik. To this end, the Defendants together with an employee of Rubloff named William Gray, made repeated promises to Mr. Zubarik that he would be kept in charge of the administration of the contract pursuant to the same terms as the agreement worked out with Mr. Schuler. As was later demonstrated, however, the Defendants had never formed an intent to keep Mr. Zubarik in the company beyond a point in time when Zubarik had set up the operation of the contract and had gotten the government novation approved.

16. Despite Mr. Zubarik's repeated demands that the Defendants put their promises in writing to him, they delayed as much as possible providing even a draft of the proposal. Nonetheless, they deluded Plaintiff by actually placing him on the payroll of PTS/Sundowner and began paying him at the \$10,000 rate starting December 1, 2004.

17. In an effort to convince the U.S. Marshall Service that the novation would continue the prior involvement of Mr. Zubarik, Defendants caused Plaintiff to attend meetings with the government contract's officers responsible for approving the novation and at which meetings, Mr. Zubarik was represented as being the person who would administer the contracts per the original intent of the parties.

18. After the novation was awarded, the Defendants for the first time sent the draft of an Employment Agreement to Mr. Zubarik. However, contrary to their prior representations it was not an Employment Agreement but a Consulting Contract which could be terminated by the Defendants and gave Plaintiff none of the protections that he had under the original agreement with Mr. Schuler.

F.

19. As part of the plan to force out Mr. Zubarik, on or about February 3<sup>rd</sup> Mr. Flynn sent a letter to Zubarik terminating him as an "employee" and proposing that he had to accept the consultant position. Under the circumstances and based upon the promises that had been made, this termination was wrongful and caused Plaintiff to be damaged in his business opportunities as well as the financial impact.

20. In addition, in drafts which were finally prepared and circulated by the Defendants, they for the first time proposed that Mr. Zubarik would have to enter into a non-compete agreement on future U.S. Marshall Service contracts if he were to accept the proposal of the Defendants to even operate as a consultant. Plaintiff, now in a position where he was not aware of the plans that the Defendants had, agreed to accept the consultant's position as long as the \$10,000 per month was kept in addition to \$3,000 to cover benefits, the small Dallas office was approved and he would be entitled to 20% of the pre-tax profits of the Marshall's contract with the ability to audit the books and records of the company to verify that there was not improper suppression of profits by the Defendants. However, he flatly rejected the non-compete agreement as not having been part of his original agreement.

21. Notwithstanding the foregoing, Defendants have stopped communicating with Mr. Zubarik and have notified the relevant parties with which Sundowner does business that he is no longer employed by and representing Sundowner on the contract, notwithstanding the fact that it is only through his efforts and work that Sundowner and Rubloff have the business. Moreover, despite the fact a non-compete agreement was never part of his agreement with Mr. Schuler and never demanded of Plaintiff until after he had been "terminated" as an employee and had successfully assisted Rubloff obtaining a novation of the Marshall's contract, it appears that Defendants now intend not to honor the terms of the agreement but to unlawfully and

fraudulently keep the benefits of the Marshall's contract which had been won through the efforts of Plaintiff.

#### IV. BREACH OF CONTRACT

22. Plaintiff incorporates 1-21 above by reference for all purposes.

23. Plaintiff would show that the Defendants breached their agreement with Plaintiff by wrongfully terminating him despite the fact that they had agreed to honor his employment contract with PTS at the time that they received an assignment of the contract from Mr. Schuler

24. Plaintiff sues for the damages he would have received pursuant to this agreement for the term of the contract plus any extension thereof. Plaintiff, based upon the cast projections which he had made in the Fall of 2004 believes that these damages are somewhat in excess of \$2,000,000 and could be as high as \$2,500,00.

#### V. FRAUD

25. Plaintiff incorporates paragraph 1-24 by reference for all purposes herein.

26. Plaintiff would show that the Defendants made material misrepresentations to him for the purpose of inducing him to assist them in the successful contract set up, assignment and subsequent novation of the Marshall's contract that had been awarded to PTS while he was the operational manager thereof. But for the Defendant's promises that he would be paid under the original contract with Mr. Schuler, that he would be in charge of the administration of the contract as had been represented to the government, and that the Defendant's were in the process of preparing his employment contract from October -- January 2005, Plaintiff would not have assisted the Defendants in the takeover of the Arizona Marshall's contract.

27. Plaintiff sues for his damages in an amount in excess of the jurisdictional limits of the Court.

#### VI. UNJUST ENRICHMENT

28. Plaintiff incorporates paragraphs 1-27 above same as if fully copied and set forth at length.

29. Plaintiff would show that the Defendants, that each of them would be unjustly enriched as a result of the efforts that Mr. Zubarik made to hire employees, set up insurance, finalize aircraft leases, set up the maintenance program support, manage the aircraft pre-contract heavy maintenance modifications and checks, and facilitate the novation of the contract from Metscan Technologies to a "new" PTS, LLC out of Georgia. As a result of the efforts of Plaintiff, the Defendants stand to be enriched by \$6,500,000 to \$10,000,000 over the next three (3) years.

30. Plaintiff sues for his damages for unjust enrichment in an amount in excess of the jurisdictional limits of the Court.

#### VII. PUNITIVE DAMAGES

31. Plaintiff incorporates paragraphs 1-30 above by reference for all purposes.

32. Plaintiff would show that the actions of the Defendants were knowing, willful and calculated to mislead the Defendant, while taking advantage of his hard work and expertise in getting the contracts up and running and the novation sold to the United States government. It is obvious from the actions of the Defendants, both in the sense that they made continuing misrepresentations to Plaintiff that they would honor the Schuler contract, that they were in the process of preparing his employment contract for Sundowner and that he would be in charge of the contract administration of the Arizona contract, that they never intended to fulfill those promises and only kept the Plaintiff in the position that they did in order to prevent him from

leaving Sundowner voluntarily before the contract had been operationally set up, was performing for the U.S. Marshall's customer, and the novation successfully secured.

33. As a result, Plaintiff sues for exemplary damages against Defendants jointly and severally in an amount in excess of the minimum jurisdictional limits of the Court.

VIII.

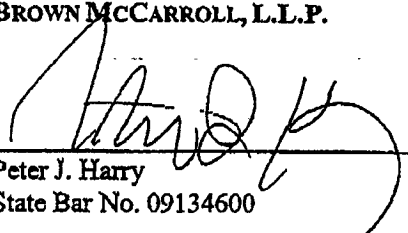
34. Plaintiff would show that it was necessary to hire the firm of Brown McCarroll, LLP to represent him in this matter, to which he has agreed to pay a reasonable attorneys fee. Pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, Plaintiff sues for his reasonable attorneys fees through the trial of this case, and in the event of an appeal to the intermediate or Texas Supreme Courts.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited to appear and answer herein and that on final trial hereof, Plaintiff have judgment for the following:

- (a) damages for breach of contract in an amount of at least \$2,000,000.00 in direct damages,
- (b) damages for fraud as prayed for herein,
- (c) damages for unjust enrichment as prayed for herein,
- (d) punitive damages in an amount to be determined by the Court,
- (e) prejudgment and post judgment interest on the above sums at the highest legal rate,
- (f) reasonable attorneys fees as prayed herein, and
- (g) such other and further relief as to which Plaintiff may show himself justly entitled both at law or in equity, both special and general.

Respectfully submitted,

**BROWN MCCARROLL, L.L.P.**



Peter J. Harry  
State Bar No. 09134600

David A. Buono  
State Bar No. 24001806

2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
(214) 999-6100  
(214) 999-6170 (fax)

ATTORNEY FOR PLAINTIFF

CN05008450

**FORM NO. 353-4—CITATION  
THE STATE OF TEXAS**

**To: RUBLOFF DEVELOPMENT GROUP, INC., THROUGH ITS REGISTERED  
AGENT, ROBERT S. BROWNSON BY SERVING THE SECRETARY OF STATE  
OFFICE OF THE SECRETARY OF STATE  
CITATIONS UNIT - P.O. BOX 12079  
AUSTIN, TX, 78711**

**CITATION**

No.: DV05-05988-I

CHARLES ZUBARIK,  
INDIVIDUALLY  
Vs.  
RUBLOFF DEVELOPMENT  
GROUP, INC., ETAL

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 162ND Judicial District Court at 600 Commerce Street, Dallas, Texas 75202.

Said **PLAINTIFF** being **CHARLES ZUBARIK, INDIVIDUALLY**  
Filed in said Court on the 21<sup>ST</sup> DAY OF JUNE 2005 against

**RUBLOFF DEVELOPMENT GROUP, INC., ETAL**

ISSUED

This 22ND DAY OF JUNE 2005

JIM HAMLIN  
Clerk District Courts,  
Dallas County, Texas

By EVETTE LAMB, Deputy

Attorney for : PLAINTIFF

PETER J. HARRY  
2000 TRAMMELL CROW CENTER  
2001 ROSS AVENUE  
DALLAS, TX 75201  
214-999-6100

For suit, said suit being numbered DV05-05988-I, the nature of which demand is as follows:  
Suit On **CONTRACT**, etc.

as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it all be returned unexecuted.

WITNESS: JIM HAMLIN, Clerk of the District Courts of Dallas, County, Texas  
Given under my name and the Seal of said Court at office this 22ND DAY OF JUNE 2005  
ATTEST: JIM HAMLIN  
Clerk of the District Courts of Dallas, County, Texas



By Evette Lamb, Deputy  
EVETTE LAMB

DALLAS COUNTY CONSTABLE  
FEES PAID  
FEES NOT PAID



CN05008451

FORM NO. 353-4—CITATION  
THE STATE OF TEXAS

To: SUNDOWNER MESA, LLC., THROUGH ITS REGISTERED AGENT CT CORPORATION BY SERVING THE SECRETARY OF STATE  
OFFICE OF THE SECRETARY OF STATE  
CITATIONS UNIT - P.O. BOX 12079  
AUSTIN, TX, 78711

2005 JUL 12 PM 12:10

JIM HAMLIN  
CLERK OF DISTRICT COURT  
DALLAS COUNTY, TEXAS

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 162ND Judicial District Court at 600 Commerce Street, Dallas, Texas 75202.

Said PLAINTIFF being **CHARLES ZUBARIK, INDIVIDUALLY**  
Filed in said Court on the 21<sup>ST</sup> DAY OF JUNE 2005 against

**RUBLOFF DEVELOPMENT GROUP, INC., ETAL**

For suit, said suit being numbered DV05-05988-I, the nature of which demand is as follows:  
Suit On **CONTRACT**, etc.  
as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it all be returned unexecuted.

WITNESS: JIM HAMLIN, Clerk of the District Courts of Dallas County Texas.  
Given under my name and the Seal of said Court at office this the 22ND DAY OF JUNE 2005  
ATTEST: JIM HAMLIN  
Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*, Deputy

EVETTE LAMB

ATTY (SOS)

RECEIVED  
CITATION

05 JUN 26 AM 9:19

PANHANDLE COUNTY CLERK  
No. DV05-05988-I

CHARLES ZUBARIK,  
INDIVIDUALLY

Vs.

RUBLOFF DEVELOPMENT  
GROUP, INC., ETAL

ISSUED

This 22ND DAY OF JUNE 2005

JIM HAMLIN  
Clerk District Courts,  
Dallas County, Texas

By EVETTE LAMB, Deputy

Attorney for : PLAINTIFF

PETER J. HARRY  
2000 TRAMMELL CROW CENTER  
2001 ROSS AVENUE  
DALLAS, TX 75201  
214-999-6100

DALLAS COUNTY CONSTABLE  
FEES  
PAID  
FEES NOT  
PAID

FORM NO. 353-4—CITATION  
THE STATE OF TEXAS

To: JAMES P. FLYNN, THROUGH ITS REGISTERED AGENT CT  
CORPORATION BY SERVING THE SECRETARY OF STATE  
OFFICE OF THE SECRETARY OF STATE  
CITATIONS UNIT - P.O. BOX 12079  
AUSTIN, TX, 78711

PH 12: 10  
JIM HAMLIN  
DISTRICT CLERK  
DALLAS, TEXAS

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 162ND Judicial District Court at 600 Commerce Street, Dallas, Texas 75202.

Said PLAINTIFF being CHARLES ZUBARIK, INDIVIDUALLY  
Filed in said Court on the 21<sup>ST</sup> DAY OF JUNE 2005 against

RUBLOFF DEVELOPMENT GROUP, INC., ETAL

For suit, said suit being numbered DV05-05988-I, the nature of which demand is as follows:  
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WITNESS: JIM HAMLIN, Clerk of the District Courts of Dallas, County Texas.

Given under my name and the Seal of said Court at office this the 22ND DAY OF JUNE 2005

ATTEST: JIM HAMLIN

Clerk of the District Courts of Dallas, County, Texas



By Evette Lamb, Deputy

EVETTE LAMB

ATTY (SOS)

CITATION

05 JUN 24 21 3:19

No.: DV05-05988-I

CHARLES ZUBARIK,  
INDIVIDUALLY

Vs.

RUBLOFF DEVELOPMENT  
GROUP, INC., ETAL

ISSUED

This 22ND DAY OF JUNE 2005

JIM HAMLIN

Clerk District Courts,  
Dallas County, Texas

By EVETTE LAMB, Deputy

Attorney for : PLAINTIFF

PETER J. HARRY

2000 TRAMMELL CROW CENTER

2001 ROSS AVENUE

DALLAS, TX 75201

214-999-6100

ALLAS COUNTY CONSTABLE

FEES  
PAID

FEES NOT  
PAID

PLAINTIFF NAME	PLAINTIFF ATTORNEY	FILE DATE	CASE NO.
ZUBARIK CHARLES	HARRY P	6/21/05	05-05988-I

09134600

DEFENDANT NAME	DEFENDANT ATTORNEY	TYPE OF CASE
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RUBLOFF DEVELOPMENT GROUP	MARIS R	CONTRACT
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12986300

DISPOSITION	COST AGAINST	DATE	REFERENCE	JUDGEMENT AMT
	TRUST FUND BALANCE		STATUS	
			ACTIVE	

ZUBARIK CHARLES

HARRY P

6/21/05

05-05988-I

TRANS DT	TRANS DESCRIPTION	REFRNCE	P/D	CD	NON-FEE	DEPOSITS	CHARGES
6/21/05	BROWN MCCARROLL LLP	37591	P	10		211.00	
6/21/05	STATE INDIGENCE		P	12			10.00
6/21/05	DC RECORDS MGT FEE		P	17			5.00
6/21/05	SECURITY FEE		P	26			5.00
6/21/05	RECORD MGT FEE		P	27			5.00
6/21/05	CLERKS FEE		P	31			50.00
6/21/05	COURT RPT SVC FEE		P	33			15.00
6/21/05	LAW LIBRARY FUND		P	36			15.00
6/21/05	APPELLATE FUND		P	52			5.00
6/21/05	STATE JUDICIAL FEE		P	53			40.00
6/21/05	MEDIATION FUND		P	55			10.00
6/21/05	FACILITY FEE		P	60			15.00
6/22/05	CIT & 2 SOS/ATTY		P	31			12.00
6/22/05	CIT & 2 SOS/ATTY		P	31			12.00
6/22/05	CIT & 2 SOS/ATTY		P	31			12.00
6/22/05	CIT & 2 SOS/ATTY		P	31			12.00
7/12/05	RET CIT TRAVIS		P	51			
7/12/05	RET CIT TRAVIS		P	51			
7/12/05	RET CIT TRAVIS		P	51			
7/12/05	RET CIT PAID		P	59			

ZUBARIK CHARLES

HARRY P

6/21/05

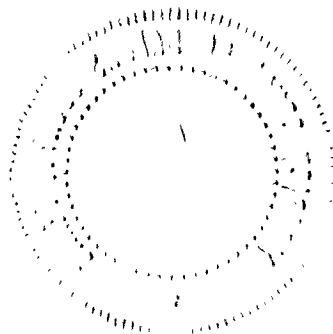
05-05988-I

TRANS DT	TRANS DESCRIPTION	REFRNC	P/D	CD	NON-FEE	DEPOSITS	CHARGES
7/12/05	RET CIT PAID		P	59			
7/12/05	RET CIT PAID		P	59			
7/19/05	SPEC APPEARANCE		D	31			
7/19/05	ORIG ANS-RUBLOFF DE	01	D	31			
7/19/05	ATTY-MARIS ROBERT F	02	D	31			

\*\*\*\* CASE TOTALS \*\*\*\*

TOTAL GROSS CASE COSTS	223.00	NON-FEE ACCTS.	.00
		COUNTY DEPOSITS	211.00
		COUNTY CHARGES	223.00
CASE BALANCE		12.00 DUE	

CT10 3





II.

Affirmative Defenses

2. Statute of Frauds. Pleading further, and in the alternative, Defendants assert that Plaintiff's claims are barred, in whole or in part, by the Statute of Frauds.

3. Failure of Condition Precedent. Pleading further, and in the alternative, Defendants assert that Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to perform all conditions precedent to recovery.

III.

Prayer

WHEREFORE, premises considered, Defendants, ***subject to the Special Appearance filed by Rubloff and Flynn concurrently herewith***, respectfully request that Plaintiff take nothing by way of their claims for affirmative relief against Defendants and that Defendants be granted any and all of the relief against Plaintiff to which they are entitled as pleaded herein or to which they may show themselves justly entitled.



Respectfully submitted,

MARIS & LANIER, P.C.



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Robert F. Maris  
State Bar No. 12986300  
Michael J. McKleroy, Jr.  
State Bar No. 24000095  
10440 N. Central Expressway  
1450 Meadow Park, LB 702  
Dallas, Texas 75231  
214-706-0920 telephone  
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANTS  
RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN

**CERTIFICATE OF SERVICE**

This is to certify that a true, correct and complete copy of the foregoing document has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the 18th day of July, 2005, to:

Peter J. Harry  
David A. Buono  
2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
VIA FACSIMILE NO. 214-999-6170  
AND VIA CERTIFIED MAIL RECEIPT  
NO. 7004 2890 0001 6540 2453



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Robert F. Maris

**DEFENDANTS' ORIGINAL ANSWER**  
**(SUBJECT TO SPECIAL APPEARANCE)**

CAUSE NO. 05-05988-I

CHARLES ZUBARIK,  
Plaintiff,

V.

**RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN,**

**Defendants.**

Σ

IN THE DISTRICT COURT.

162nd JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**DEFENDANTS RUBLOFF DEVELOPMENT GROUP,  
INC. AND JAMES P. FLYNN'S SPECIAL APPEARANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Rubloff Development Group, Inc. (“Rubloff”) and James P. Flynn (“Flynn”)(collectively “Defendants”) and, under the authority of Rule 120a of the Texas Rule of Civil Procedure, hereby specially appears in this case for the sole purpose of objecting to the jurisdiction of the court over the persons of Defendants. In support thereof, Defendants respectfully show this Honorable Court the following:

I.

### Procedural Note

1. This special appearance is made to the entire proceeding.
2. This special appearance is filed prior to any motion to transfer or any other plea, pleading, or motion filed by Defendants.

**DEFENDANTS RUBLOFF DEVELOPMENT GROUP,  
INC. AND JAMES P. FLYNN'S SPECIAL APPEARANCE**

PAGE 1

II.

Facts Supporting Relief Sought

3. Defendants are not residents of the State of Texas. Rubloff is a resident of the State of Illinois and Flynn is a resident of the State of Virginia. Defendants were not served with the Plaintiff's Original Petition in the State of Texas. Plaintiff's Original Petition appears to allege that Defendants are liable to Plaintiff under an oral employment agreement between Plaintiff and Metscan—not a party to this litigation—and/or Plaintiff and Defendant Sundowner Mesa, L.L.C. ("Sundowner"), a Georgia corporation. Plaintiff does not allege, nor could he, that there was a contractual relationship between Plaintiff and Defendants that was entered into, or to be performed, in whole or in part, in the State of Texas.

4. The Court does not have jurisdiction over Defendants because Defendants are not amenable to process issued by the courts of Texas in that:

- a. Defendants have committed no tort on Plaintiff, in whole or in part, in the State of Texas;
- b. Defendants did not enter into any contract with Plaintiff to be performed in whole or in part in the State of Texas;
- c. Defendants are not residents of Texas and are not required to maintain and do not maintain a registered agent for service in Texas;
- d. Defendants do not maintain a place of business in the State of Texas, and have no employees, servants, or agents within the state;
- e. Defendants do not engage in, nor has they engaged in, business in the State of Texas in the capacities in which they have been sued; and

- f. Defendants were not served with process in the State of Texas.

5. Defendants have no minimum contacts, either specific or general, with the State of Texas. However, even if they did have minimum contacts with Texas, the exercise of jurisdiction on Defendants would offend traditional notions of substantial justice and fair play.

### III.

#### Arguments & Authorities

6. In support of its claim for jurisdiction, Plaintiff contends that Defendants “conduct[s] business in Texas and/or ha[ve] committed torts within Texas.” Personal jurisdiction can be either specific or general. *C.S.R. Ltd.*, 925 S.W.2d at 595. Specific jurisdiction occurs when the cause of action arises out of the defendant’s minimum contacts with the forum state. *Id.* General jurisdiction occurs when a nonresident defendant’s contacts are continuous and systematic, allowing the forum state to exercise jurisdiction over the defendant even if the cause of action did not arise out of the contacts with the state. *Id.* General jurisdiction requires more substantial contact with the forum state. *Id.* After determining that the nonresident defendant has satisfied the minimum contacts requirement, the second part of the constitutional test requires that the maintenance of the suit would not offend “traditional notions of fair play and substantial justice.” *Id.*

7. Defendants deny that Texas courts have jurisdiction over them because they did not purposefully establish minimum contacts with Texas. *CSR Ltd. v. Link*, 925 S.W.2d 591, 594-95 (Tex.1996). Specifically, Defendants deny that they has had any, or enough, contacts with Texas to justify a Texas court claiming specific or general jurisdiction of him.

8. In reading Plaintiff's Original Petition as a whole, Plaintiff's jurisdiction arguments seems to rest solely upon a purported clause in the oral agreement allegedly entered into between Plaintiff and Metscan that "contemplated" that a small office would be set up in Dallas to act as a central point for the management of Prisoner Transportation Services ("PTS").

9. In contrast, Plaintiff alleges no act by Defendants taking place or giving rise to the specific jurisdiction in the State of Texas against Defendants.<sup>1</sup> Therefore, there is no sufficient basis for specific jurisdiction of Defendants in the State of Texas. Further, there are no allegations providing a sufficient basis for general jurisdiction of Defendants in the State of Texas.

10. In the present case, the exercise of jurisdiction by this court over Defendants would offend traditional notions of fair play and substantial justice, depriving Defendants of due process as guaranteed by the Constitution of the United States. Defendants have not availed themselves to the privilege of conducting activities or business in the State of Texas, nor has they established what would be considered minimum contacts in the state under Texas law. In determining whether the exercise of jurisdiction will offend traditional notions of fair play and substantial justice, Courts focus on:

“(1)the burden on the defendant, (2) the interests of the forum state in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the

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<sup>1</sup> An individual's contacts on behalf of a corporation do not generally give rise to personal jurisdiction over the person. See *Leon, Ltd. v. Albuquerque Commons Partnership*, 862 S.W.2d 693 (Tex. App.—El Paso 1993, no pet.)(citing *Stuart v. Spademan*, 772 F.2d 1185, 11997 (5th Cir. 1985); *Garner v. Furmanite Australia Pty., Ltd.*, 966 S.W.2d 798, 803 (Tex. App.—Houston [1st Dist] 1998, pet. denied); *Royal Mortg. Corp. v. Montague*, 41 S.W.3d 721, 738 (Tex. App.—Ft. Worth 2001, no pet.).

several states in furthering fundamental substantive social policies.

11. The facts in this case do not warrant the exercise of jurisdiction over Defendants. It would be burdensome for Defendants to be required to appear in the State of Texas to defend this suit. Further, there is no more interest by the State of Texas in adjudicating this dispute than the states of Illinois, Virginia, or even Georgia. In addition, there are no facts known to Defendants that suggest that Plaintiff could not obtain convenient and effective relief in another forum that may have jurisdiction over Defendants. Finally, Defendants suggest that the interest of furthering fundamental substantive social policies outweighs the interest of obtaining the most efficient resolution of controversies. That is, to subject Defendants to personal jurisdiction in the State of Texas based upon the allegations set forth in Plaintiff's Original Petition may be efficient to Plaintiff, but it would undermine the constitutional safeguards by subjecting Defendants, or other parties similarly situated, to jurisdiction in the State of Texas under circumstances that could not have been contemplated by Defendants.

12. For the reason that there is no sufficient basis to assert personal jurisdiction over Defendants or, in the alternative, that the assertion of same would offend the traditional notions of fair play and substantial justice, Defendants' special appearance should be sustained and the causes of action against Defendants dismissed.

#### IV.

#### Prayer

WHEREFORE, premises considered, Defendants request that the Court grant this motion and dismiss all claims assert against him for want of jurisdiction.

Respectfully submitted,

MARIS & LANIER, P.C.

RFM

---

Robert F. Maris  
State Bar No. 12986300  
Michael J. McKleroy, Jr.  
State Bar No. 24000095  
10440 N. Central Expressway  
1450 Meadow Park, LB 702  
Dallas, Texas 75231  
214-706-0920 telephone  
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT  
JAMES P. FLYNN

**CERTIFICATE OF SERVICE**

This is to certify that a true, correct and complete copy of the foregoing document has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the 18th day of July, 2005, to:

Peter J. Harry  
David A. Buono  
2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
VIA FACSIMILE NO. 214-999-6170  
AND VIA CERTIFIED MAIL RECEIPT  
NO. 7004 2890 0001 6540 2453

RFM

---

Robert F. Maris

882.002\appear.spc.wpd

**DEFENDANTS RUBLOFF DEVELOPMENT GROUP,  
INC. AND JAMES P. FLYNN'S SPECIAL APPEARANCE**

PAGE 6

**VERIFICATION**

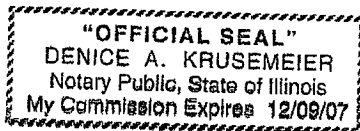
STATE OF Illinois §  
COUNTY OF Winnebago §

Before me, the undersigned Notary Public, on this day personally appeared Mark A. Robinson the duly authorized representative of Defendant Rubloff Development Group, Inc. ("Defendant"), and after being duly sworn stated under oath that that he has read the above Special Appearance and that every statement contained in its is within his personal knowledge and is true and correct.

RUBLOFF DEVELOPMENT GROUP, INC.

[Signature]  
By: Mark A. Robinson  
Its: President

SUBSCRIBED AND SWORN TO BEFORE ME ON 18 day of July, 2005.



[Signature]  
Notary Public in and for the  
State of Illinois

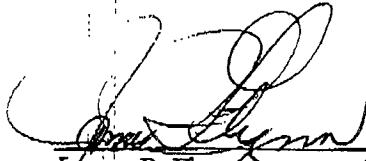


**VERIFICATION**

STATE OF Virginia  
COUNTY OF Prince William

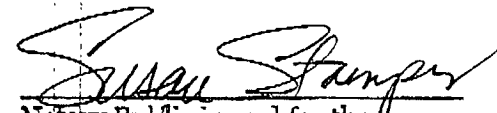
SS  
SS  
SS

Before me, the undersigned Notary Public, on this day personally appeared James P. Flynn, and after being duly sworn stated under oath that he is the defendant named in this lawsuit, that he has read the above Special Appearance and that every statement contained in its is within his personal knowledge and is true and correct.

  
James P. Flynn

SUBSCRIBED AND SWORN TO BEFORE ME ON 18th day of July, 2005.



  
Notary Public in and for the  
State of Virginia  
My Commission Expires 4-30-06

CAUSE NO. 05-05988-I

CHARLES ZUBARIK,

Plaintiff,

v.

RUBLOFF DEVELOPMENT GROUP,  
INC., SUNDOWNER MESA, L.L.C.  
and JAMES P. FLYNN,

Defendants.

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IN THE DISTRICT COURT

162nd JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**FIAT**

Please take notice that Defendants' Special Appearance will be scheduled for hearing on the \_\_\_\_ day of \_\_\_\_\_, 2004 at \_\_\_\_:\_\_\_\_.m. in the 162nd District Court of Dallas County, Texas.

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JUDGE PRESIDING  
(or Clerk of the Court)

**ORIGINAL**

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein do not replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

<b>I. (a) PLAINTIFFS</b> Charles Zubarik	<b>DEFENDANTS</b> Rubloff Development Group, Inc. Sundowner Mesa, L.L.C. James P. Flynn County of Residence of First Listed Defendant <u>Cook County, Ill</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
<b>(b) County of Residence of First Listed Plaintiff</b> (EXCEPT IN U.S. PLAINTIFF CASES) <u>Dallas</u>	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Peter J. Harry, Brown McCarroll, L.L.P., 2000 Trammell Crow Center, 2001 Ross Avenue, Dallas, Tx 75201, (214)999-6100	<b>Attorneys (If Known)</b> Robert F. Maris, Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Tx 75231, (214)706-0920

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																		
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF <input checked="" type="checkbox"/> 1</th> <th style="text-align: center;">DEF <input type="checkbox"/> 1</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center;">PTF <input type="checkbox"/> 4</th> <th style="text-align: center;">DEF <input type="checkbox"/> 4</th> </tr> <tr> <th style="text-align: left;">Citizen of Another State</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: center;"><input type="checkbox"/> 2</th> <th style="text-align: left;">Incorporated and Principal Place of Business In Another State</th> <th style="text-align: center;"><input type="checkbox"/> 5</th> <th style="text-align: center;"><input checked="" type="checkbox"/> 5</th> </tr> <tr> <th style="text-align: left;">Citizen or Subject of a Foreign Country</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: center;"><input type="checkbox"/> 3</th> <th style="text-align: left;">Foreign Nation</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> <th style="text-align: center;"><input type="checkbox"/> 6</th> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

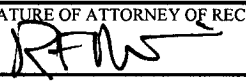
V. ORIGIN (Place an "X" in One Box Only)						
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION
Brief description of cause <u>28 U.S.C. §§1332, 1441(a)</u> <u>Breach of contract, fraud, unjust enrichment.</u>

VII. REQUESTED IN COMPLAINT:
<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <b>DEMAND \$</b> CHECK YES only if demanded in complaint <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY
(See instructions) JUDGE _____ DOCKET NUMBER _____

DATE <u>July 27, 2005</u>	SIGNATURE OF ATTORNEY OF RECORD 
------------------------------	--

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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ORIGINAL

United States District Court  
Northern District of Texas

ORIGINAL

Supplemental Civil Cover Sheet For Cases  
Removed From State Court

3 05 CV 1491 - H

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

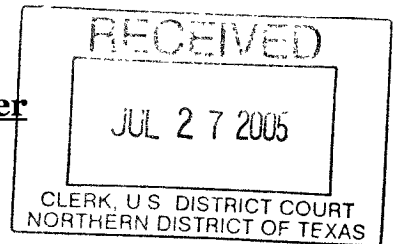
1. State Court Information:

Court

162nd District Court of  
Dallas County, Texas

Case Number

05-05988-I



2. Style of the Case:

Charles Zubarik, Plaintiff, v. Rubloff Development Group, Inc., Sundowner Mesa, L.L.C. and James P. Flynn, Defendants.

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type

Attorney(s)

**Plaintiff:**

Charles Zubarik

Peter J. Harry  
State Bar No. 09134600  
David A. Buono  
State Bar No. 24001806  
BROWN MCCARROLL, L.L.P.  
2000 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
214-999-6100 telephone  
214-999-6170 facsimile

**Defendants:**

Rubloff Development Group, Inc.  
Sundowner Mesa, L.L.C.  
James P. Flynn

Robert F. Maris  
State Bar No. 12986300  
Michael J. McKleroy  
State Bar No. 24000095  
MARIS & LANIER, P.C.  
10440 N. Central Expressway  
Suite 1450, LB 702  
Dallas, Texas 75231  
214-706-0920 telephone  
214-706-0921 facsimile

**3. Jury Demand:**

Was a Jury Demand made in State Court?      ☐ Yes      ☒ No

**4. Answer:**

Was an Answer made in State Court?      ☒ Yes      ☐ No

If "Yes," by which party and on what date?

Defendants Rubloff Development Group, Inc., Sundowner Mesa, L.L.C., and James P. Flynn filed their answer in the 162nd Judicial District Court of Dallas County, Texas on July 19, 2005.

**5. Unserved Parties:**

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>
None.	N/A

**6. Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>
None.	N/A

**7. Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

**Party**

**Claim(s)**

**Plaintiff**

Breach of contract, fraud and unjust enrichment against all Defendants.

**Defendants**

No affirmative claims for relief, but deny that Plaintiff is entitled to any relief. In addition, Defendants Rubloff Development Group, Inc. and James P. Flynn assert that this court lacks personal jurisdiction over them.

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